

Federal Energy Regulatory Commission

§ 385.1901

chapter will apply, as appropriate, to any evidentiary proceeding to assess a civil penalty.

(c) An assessment order under this section shall include the administrative law judge's findings and the basis for such assessment.

§ 385.1509 District court procedures (Rule 1509).

(a) After receipt of the notification of election to apply the provisions of this section pursuant to Rule 1507, the Commission will promptly assess the penalty it deems appropriate, in accordance with Rule 1505.

(b) If the civil penalty is not paid within 60 calendar days after the assessment order is issued under paragraph (a) of this section, the General Counsel, unless otherwise directed by the Commission, will institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty.

§ 385.1510 Modification of civil penalty (Rule 1510).

(a) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, the Commission may consider the nature and seriousness of the violation, and the efforts of the licensee, exemptee, permittee, or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(c) The Commission's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if Rule 1508 procedures are utilized, or prior to a final decision by the United States District Court if Rule 1509 procedures are utilized.

§ 385.1511 Collection of civil penalties (Rule 1511).

If any person fails to pay a civil penalty assessment, the Commission will seek to recover the amount of the penalty plus interest in any appropriate District Court of the United States. Interest will begin to accrue on the date

the Commission issues a final order under Rule 1508 or the date on which the appropriate District Court enters final judgment in favor of the Commission under Rule 1509.

[Order 502, 53 FR 32039, Aug. 23, 1988]

Subparts P—R [Reserved]

Subpart S—Miscellaneous

§ 385.1901 Interpretations and interpretative rules under the NGPA (Rule 1901).

(a) *Purpose and applicability*—(1) *Purpose*. The purpose of this section is to provide procedures by which:

(i) A person may seek a written interpretation from the General Counsel construing a provision of the NGPA, or clarifying a rule issued by the Commission under the NGPA; and

(ii) The Commission may publish an interpretative rule that will have general applicability and effect.

(2) *Applicability*. (i) This section applies to requests under section 502(c) of the NGPA for interpretations of the NGPA or of rules or of orders, having the applicability and effect of a rule as defined in 5 U.S.C. 551(4), issued under the NGPA. It does not apply to orders issued under sections 301, 302, and 303 of the NGPA.

(ii) This section applies to requests for interpretations to prospective, existing or completed facts, acts, or transactions. Interpretations based on hypothetical facts, acts, or transactions will not be considered.

(b) *Definitions*. For the purpose of this section, the following definitions apply.

(1) *Direct participant* means any person or legal entity who is, or plans to be an actual party in the act, transaction, or circumstance presented, and who has an immediate or direct financial interest in the act, transaction, or circumstance.

(2) *Interpretation* means a written statement of the General Counsel which applies a particular rule to a particular set of facts, acts, circumstances or transactions. In the discretion of General Counsel, the interpretation may contain a detailed factual and legal analysis, a summary of

the facts or the law, or both, or it may be a conclusory statement.

(3) *Interpretative rule* means an official interpretative statement of general applicability issued by the Commission and published in the FEDERAL REGISTER that applies the NGPA or rules issued thereunder to a specific set of facts, acts, circumstances and transactions.

(4) *NGPA* means the Natural Gas Policy Act of 1978.

(5) *Request* means a request for an interpretation.

(6) *Rule* means a rule or an order having the effect of a rule as defined in 5 U.S.C. 551(4).

(c) *Persons who may request an interpretation*—(1) Any person who is or will be a direct participant in an act, transaction, or circumstance affected by the NGPA or a rule issued by the Commission under the NGPA may file with the Office of the General Counsel a request for an interpretation.

(2) Requests for interpretations must be addressed to the Office of the General Counsel as follows:

Federal Energy Regulatory Commission, Interpretations Section, Office of the General Counsel, Suite 8000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(3) Requests for interpretation under this paragraph need not be filed with the Secretary.

(d) *Content of request*—(1) *Facts*. A request for interpretation must contain a full and complete statement of the relevant and material facts pertaining to the act, transaction, or circumstance that is the subject of the request for interpretation. When the request pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be included in the request.

(2) *Statement of the question*. The request must clearly designate the section of the statute, regulation, rule, or part thereof which the person making the request seeks to have interpreted and must set forth clearly and concisely the question for which an interpretation is sought. The request may also set forth a proposed answer to the question.

(3) *Analysis*. If the request proposes a particular answer:

(i) The request must set forth a legal analysis in support of the proposed answer and cite relevant authorities in support thereof.

(ii) The request must set forth the legal and business consequences which will flow from the proposed answer.

(4) *Factual statements*. (i) The request must be accompanied by a statement that to the best of the applicant's personal information, knowledge, and belief there is no untrue statement of a material or relevant fact and there is no omission of a material or relevant fact made in the request.

(ii) Any untrue statement or omission of a material or relevant fact upon which the Office of the General Counsel relied in a request for an interpretation is deemed to be a statement or entry under section 1001 of Title 18, United States Code.

(5) *Notification of other parties*. (i) A person submitting a request must specify each person who is a direct participant in the circumstance, act or transaction; must notify them in writing of the request for an interpretation; and must send them a copy of such request. Such notification and the addresses of the persons notified must be included in a request to the General Counsel.

(ii) Each person notified pursuant to paragraph (d)(5)(i) of this section may submit information regarding any fact provided in the request of which it has personal knowledge, if such fact is different from the facts presented by the applicant. Such fact must be presented to the Office of the General Counsel as set forth in paragraph (d)(4) of this section.

(6) The request must be accompanied by the fee prescribed in §381.405 of this chapter or by a petition for waiver pursuant to §381.106 of this chapter.

(e) *Additional information*. The General Counsel may request additional information, documentation or legal analysis in connection with any request for any interpretation.

(f) *Referral of information*. Information submitted in a request for interpretation may be used by the Commission or its Staff in their official capacity. Any information received will be placed in a public file in the Commission's Office of Public Information.

(g) *The interpretation*—(1) Except as provided in paragraph (g)(2) of this section, the General Counsel will provide a copy of his or her written interpretation of the NGPA or rule as applied to the act, transaction, or circumstance presented upon the person who made the request for the interpretation and upon persons named in the request as direct participants in the act, transaction, or circumstance.

(2) The General Counsel may determine not to issue an interpretation, in which case the person who made the request and direct participants as specified in the request will be notified in writing of the decision not to issue an interpretation, and the reason for the decision.

(3) Only those persons to whom an interpretation is specifically addressed and other persons who are named in the request, who have been informed by the applicant for an interpretation of the pendency of the request and who are direct participants in the act, transaction or circumstance presented, may rely upon it. The effectiveness of an interpretation depends entirely on the accuracy of the facts presented to the General Counsel. If a material or relevant fact has been misrepresented or omitted or if any material or relevant fact changes after an interpretation is issued or if the action taken differs from the facts presented in the request, the interpretation may not be relied upon by any person.

(4) An interpretation may be rescinded or modified prospectively at any time. A rescission or modification is effected by notifying persons entitled to rely on the interpretation at the address contained in the original request.

(5) Any interpretation based on the NGPA or a rule issued thereunder in effect at the time of issuance may be relied upon only to the extent such law or rule remains in effect.

(6) Except as provided in paragraphs (g)(3), (g)(4) and (g)(5) of this section, the Staff will not recommend any action to the Commission which is inconsistent with the position espoused in the interpretation. The interpretation of the General Counsel is not the interpretation of the Commission. An interpretation provided by the General

Counsel is given without prejudice to the Commission's authority to consider the same or like question and to issue a declaratory order to take other action which has the effect of rescinding, revoking, or modifying the interpretation of the General Counsel.

(h) *Appeal*. There is no appeal to the Commission of an interpretation.

(i) *Interpretative rules*. Upon the petition of any person or upon its own motion, the Commission may publish in the FEDERAL REGISTER an interpretative rule regarding any question arising under the NGPA or a rule promulgated thereunder. Any person is entitled to rely upon an interpretative rule.

(j) *Applications for adjustments treated as requests for interpretations*. Except for the notification provisions of paragraph (d)(5) of this section, the provisions of this section apply to any petition for an adjustment which is deemed a request for an interpretation under Rule 1117. Notice to all parties to an adjustment proceeding under subpart K of this part that is deemed to be a request for an interpretation will be given under Rule 1117(d)(1).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 394, 49 FR 35366, Sept. 7, 1984]

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

(b) All appeals of staff action that were timely filed prior to December 3, 1990 and that had not been acted upon by the Commission on their substantive merits are deemed to be timely filed requests for rehearing of final agency action. All notices issued by the Commission prior to December 3, 1990 stating the Commission's intent to act on appeals of staff action such that they are not deemed denied by the expiration of a 30-day period after the filing of the appeal, are deemed to be orders granting rehearing of final agency